



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/169328

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 07, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 27, 2015, at Wausau, Wisconsin.

The issue for determination is whether the agency correctly calculated the petitioner's monthly FS benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County. He is an FS household of one.
2. Petitioner's monthly gross FS income is \$1,697.90. He pays rent, utilities, and medical bills monthly.

3. Petitioner was receiving \$166.00 in monthly FS benefits, but after discovering a budgeting error on September 11, 2015, his FS benefits were reduced to \$95.00 in October, 2015. Petitioner's FS benefits were further reduced to \$16.00 for November, 2015, due to the exhaustion of petitioner's medical expense deduction. .
4. On October 7, 2015, the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### **DISCUSSION**

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires the county to start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

The agency initially calculated the petitioner's monthly FS benefits effective August, 2015 incorrectly. The agency incorrectly budgeted \$775.00 in monthly rent for petitioner; petitioner's monthly rent was actually \$525. This was corrected and resulted in a decrease in petitioner's FS allotment. I have reviewed this budgeting and find no error.

Petitioner's FS allotment further decreased in November, 2015, due to no further medical expenses being deducted from his budget. Petitioner had provided medical expense information to the respondent in August, 2015. Respondent identified \$1,793.00 in medical expense deductions, and budgeted those over a period of three months, to provide petitioner the most favorable FS allotment. I have reviewed this budgeting and find no error.

Petitioner argues that he simply cannot afford to purchase sufficient food with a monthly allotment of only \$16.00. He argues that he has many other monthly payment obligations. The respondent countered that it is unable to budget for these other monthly payments, and I concur. The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is not eligible for a higher FS allotment; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### **CONCLUSIONS OF LAW**

The agency correctly calculated the petitioner's FS benefits.

**THEREFORE, it is**

**ORDERED**

That this petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 20th day of November, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 20, 2015.

Marathon County Department of Social Services  
Division of Health Care Access and Accountability